Legislative Department
Seattle City Council
Memorandum

Date: May 6, 2013

To: Housing, Human Services, Health, and Culture Committee

From: Rebecca Herzfeld, Council Central Staff
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Subject: Land use limitations on the scale of marijuana-related activities – Council Bill 117744

At the April 24th meeting of the HHSHC Committee, Councilmembers requested that staff prepare a memo summarizing potential amendments to Council Bill (CB) 117744 in response to public comments. As introduced, this legislation would limit marijuana-related activity to a scale that is appropriate for the zoning designation and characteristics of the area in which it would be located, and it would also implement changes to the regulations for urban farms in Manufacturing and Industrial Centers to clarify definitions and implement size limits.

The following is a summary of the three major issues identified by the public with potential options for amendments.

1. **Should the proposed 10,000 square foot size limit for urban farms, including grow operations, be increased in industrial zones within the Manufacturing and Industrial Centers?**

   The purpose of the proposed legislation is to limit the off-site impact of larger-scale marijuana-related activity. One way the proposal would do this is to limit the size of urban farms in industrial zones in Manufacturing and Industrial Centers to 10,000 square feet (SF), excluding related office and food processing uses. Attachment 1 is a map showing the City's industrial zones and the boundaries of the Duwamish and Ballard-Interbay Manufacturing and Industrial Centers.

   The limit would minimize competition for space between industrial uses and marijuana grow operations, which are likely to be able to pay higher rents, by restricting grow operations from competing for larger spaces. The size limit would apply to all urban farms, regardless of the product that is grown, although in the near term marijuana is the crop most likely to be grown on a large scale. It is very difficult to quantify the actual amount of competition that may occur between traditional industrial uses and marijuana grow operations.

   While the City does not have detailed information about existing or proposed marijuana grow operations, Department of Planning and Development (DPD) staff believe that almost all existing operations are close to or less than 10,000 SF in size. This size is generally sufficient to fully supply a single, average-sized medical marijuana dispensary, and current state and federal limitations on growing marijuana encourage grow operations to remain small.

The new state regulations on certain marijuana-related activity have the potential to substantially change the marketplace, although it is difficult to know exactly what their impact will be. In recent conversations, Washington State Liquor Control Board staff have said that studies of grow operations in more mature markets, such as Holland, suggest that sizes between 30,000 SF and 50,000 SF are necessary to produce cost-competitive grow operations for the general market. This new information suggests that the proposed 10,000 SF limit might be fine for some high-end or specialty growers, but could be problematic for most growers in the long term.

Marijuana industry stakeholders have also requested higher size limits because a small size limit would further hamper their search for appropriate spaces to grow marijuana. Space is already difficult to find given the low vacancy rate in Seattle's industrial areas and the fact that many property owners don't feel comfortable renting to businesses involving marijuana.

In considering limits, it is important to note that there are four major categories of industrial zones:

- IC (Industrial Commercial) – zones with the loosest use and maximum size restrictions; represents about 8% of all industrial areas, most of which is located outside Manufacturing and Industrial Centers.
- IB (Industrial Buffer) – primarily industrial parcels next to non-industrial zones; similar to IC in use and maximum size restrictions; represents about 5% of all industrial areas.
- IG2 (Industrial General 2) – represents about 41% of all industrial areas.
- IG1 (Industrial General 1) – zone with the strictest use and maximum size restrictions; represents about 46% of all industrial areas.

It should be noted that most of the IC and IB zones are located within the state's 1,000 foot buffer area to separate licensed marijuana-related activities from certain protected uses, and that the IG1 zone is predominately occupied by port property or located in the shoreline district. Consequently, the vast majority of potential space for grow operations in industrial areas is located in IG2 zones.

The North Seattle Industrial Association has commented that it would prefer that marijuana grow operations be completely prohibited in IG1 and IG2 zones, since they "could drive up the property values and rents for existing maritime and manufacturing businesses."

Committee options for addressing this issue include:

Option A: Keep limit at 10,000 SF
Option B: Increase limit in IC, IB, and IG2 zones to 50,000 SF; keep limit in IG1 zones at 10,000 SF
Option C: Raise limit in all zones to 50,000 SF

Committee Direction:

2. Should existing businesses involving the growing, operating, or processing of marijuana located in Pioneer Square be "grandfathered" (i.e. allowed to continue even if they violate the proposed regulations)?

As noted above, the purpose of the proposed legislation is to limit the off-site impact of larger-scale marijuana-related activity. The legislation would accomplish this by limiting the level of marijuana activity associated with businesses and residences in certain residential and historic character areas to levels commensurate with what the State defines as a *single* collective garden. The proposed limits would apply in all designated Historic Districts and in the following zones: Single-family, Multifamily, Pioneer Square Mixed, International District Mixed, International District Residential, Pike Place Mixed, Harborfront, and Neighborhood Commercial 1.

Current state rules (prior to implementation of Initiative 502 starting in December 2013) only allow growing, processing, and distribution of medical marijuana as part of collective gardens. While the regulations for collective gardens were intended to allow small groups of individuals to grow for their own use, a lack of clarity in the state regulations has led to commercial dispensaries operating throughout Seattle.

While the City does not have comprehensive information of marijuana-related businesses, a survey of business licenses and online advertisements suggests that there may be only one large-scale dispensary that would be required to move from its current location by the land use limitations in the proposed legislation. This dispensary is located in Pioneer Square. However, there is no way of knowing how many grow operations, processing facilities, or home businesses might be affected, as these operations don't tend to advertise. Additionally, it is difficult to tell whether any of these businesses would be able to produce documentation demonstrating when they began to operate, since many business owners are currently afraid to state their specific occupation on business licenses or other official documentation.

Usually a business that is no longer permitted in a zone due to a change in the code is not allowed to expand operations beyond what existed prior to the amendment. In this case, it would not be practical to apply such a limit. Because the standards are based on the amount of marijuana involved in an activity, it would be extremely difficult for DPD enforcement staff to determine whether an increase the level of marijuana-related activity has occured. If the Committee decides to permit an exemption in Pioneer Square, the grandfathered business would therefore be able to expand over time. The business could also be sold to new owners.

Option A: Maintain the existing proposal, in which businesses would have to conform to proposed regulations within 12 months of the effective date of the ordinance.
Option B: Exempt businesses from the restriction on the level of marijuana-related sales in the Pioneer Square Preservation District and the Pioneer Square Mixed zone, provided that the owner of the business can demonstrate to the DPD Director's satisfaction that, as of January 1, 2013, the business had a valid City of Seattle business license and was selling marijuana, marijuana-infused products, or useable marijuana in its current location.

Committee Direction:

3. Should the definition of "food processing" uses be clarified to more clearly state that processing of marijuana would be included?

Processing of marijuana could occur within a food processing use under the Land Use Code; however, one commenter expressed a concern that this language was confusing since many people do not consider marijuana a food. Outside the context of marijuana-related activity, others have expressed confusion over the application of "food procesing" to such activities as catering. Modifying the definition of food processing could help to clarify the intent of the Code.

Option A: Keep current definition.
Option B: Adopt the following amendments to clarify the definition of food processing. The proposed amendments would make the definition more general by changing the term "food products" to "products for human consumption," and would clarify that food processing includes catering services. Note that changing the definition would require a change in the title of the legislation, so a new bill would need to be introduced.

"Food processing and craft work" means a commercial use in which food items and craft work are produced without the use of a mechanized assembly line and includes but is not limited to the following:

1. "Custom and craft work" means a food processing and craft work use in which nonfood, finished, personal or household items, which are either made to order or which involve considerable handwork, are produced. Examples include but are not limited to pottery and candlemaking, production of orthopedic devices, motion picture studios, printing, creation of sculpture and other art work, and glassblowing. The use of products or processes defined as high-impact uses shall not be considered custom and craft work.
2. "Food processing" means a food processing and craft work use in which ((~~food~~)) products for human consumption((~~ in its final form~~)), such as candy, baked goods, seafood, sausage, tofu, pasta, beverages, tinctures, consumable oils, products to be smoked, etc., ((~~is~~))are produced((~~, when the food is distributed to retailers or wholesalers~~)) for ((~~re~~))sale and consumption off the premises. Food processing includes catering services. ((~~Food or beverage p~~))Processing of products for human consumption using mechanized assembly line production of canned or bottled goods is not included in this definition, but ((~~shall be~~)) is considered to be light manufacturing.

Committee Direction:

Next Steps
If the Committee is interested in changing the definition of food processing, a new bill can be introduced by May 20, in time for a possible vote in Committee on May 22 on the other issues that were discussed today.

Attachment 1: Map industrial zones and Manufacturing and Industrial Centers.

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